19/42 File No. O. Ct Fees/42

K Legal DEPARTMENT
A BRANCH

Subject:—

Opinions under the
Court Fees Act 1870

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File No. O Ct Fees./42

Stl. Sectt. Slip 24 B e.

134-A

C O N T E N T S.

Legal Department File No. O. Court Fees/ 1942.

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5.	936-E 23.5.42 & 6.6.42	5151 1.7.42	Question whether where an inventory of deceased's estate has been filed by the executor under sec.277 of the Indian succession Act, 1865 or sec.98 of the Probate & Administration Act, 1881 and the period of six months has elapsed from the date of the lodging of an inventory, action can be taken on behalf of the Collector under sec.19(1)(a) of the Act.	
	2311		2) As the petitioner is now dead, whether any action can be taken against his surety for recovery of the deficit probate duty.	9 - 18

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S.No.	R.I./ O.No.	Subject	Pages.
6.	6734 19.8.42	Questions re 1) Whether rules can be made under sec.27 of the Act requiring the Supdt. of Stamps to determine the amount of the court fee to be paid in the case of Succession certificates issued under sec.382 of the Indian Succession Act,1925, and to cancel the stamps due on such certificates. 2) Whether it is open to the Political Officer to issue separate succession certificates in respect of properties situates in different Provinces.	19 - 20

S-Cs.
K.V.V.
21/5.

No.5084/4-B.
Home Department.
5th. January 1942.

From.

J.M.Sladen, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Home Department.

To,

The Agent and General Manager,
B.B. and C.I. Railway,Company,
Church Gate, Bombay.

Subject:- Court Fees,
Realisation of —— and Process fees
From Railway Companies.

Sir,

With reference to your letter No. E/84/40,dated the 10th December 1941, on the subject noted above, I am directed to state that, as the B.B. and C.I. Railway is a state owned Railway, the instructions issued in Government Circular, Home Department, No.5084/4, dated the 6th September 1941, are not applicable to cases filed by that Railway. No court-fees and process-fees are therefore leviable in cases filed by that Railway under the Indian Railways Act, 1890, and the officers concerned are being informed accordingly.

I have the honour to be,
Sir,
Your most obedient servant,

J.M. Sladen,

Secretary to the Government of Bombay,
Home Department.

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No.5084/4-B.
Home Department,
Bombay Castle, 5th January 1942.

Copies, with copies of the letter to which it is a reply, forwarded with compliments for information to:-
All Commissioners of Divisions,
All District Magistrates,
The Chief Presidency Magistrate,Bombay,
The Revenue Department,
The Legal Department.

Sd/-

for Secretary to the Government of Bombay,
Home Department.

P.T.O.

BOMBAY, BARODA AND CENTRAL INDIA RAILWAY COMPANY.

Agent & General Manager's Office,
Church Gate,

No.E/84/40. Bombay, 10th December 1941.

The Secretary to the Govt. of Bombay,
Home Department,
Bombay.

Court fees.
Realisation of- and Process fees from
Railway Company.

Dear Sir,

I beg to state that Criminal Courts in Bombay Presidency now demand Rs.0-8-0 as Court Fee and Rs.0-8-0 as Process Fee in every non-cognizible case filed by this Administration under section 112 or 113 of the Indian Railways Act, 1890.

This levy, it is understood, is the outcome of the Government of Bombay, Home Department's circular No.5094/4 dated the 6th September 1941.

I would point out, however, that, as the B.B.& C.I.Railway is State-owned, it does not come within the purview of the abovementioned orders.

Moreover, I beg to refer to Section 19(xviii) of the Court Fees Act, 1870, which specifically exempts complaints preferred by a Railway Company from Court Fees, and to section 57 of the Presidency Magistrates (Court Fees) Act of 1877, which provides that the fee of Rs.0-8-0 (Process Fee) , otherwise levied for every summons or warrantissued by a Presidency Magistrate, shall be remitted when a complaint is made by a public servant in the execution of his duties. A Railway servant presenting a complaint under section 112 or 113 of the Indian Railways Act is in the position of a public servant.

In the circumstances, I shall be glad if you will kindly issue instructions to exempt this Railway from payment of Court Fee and Process Fee in cases filed under Section 112 or 113 of the Indian Railways Act.

Yours faithfully,

Sd/-

For Agent and General Manager.

True Copy.

Sd/-
for Superintendent

4-Co.
N.V.V.
18/5.

Court- fee stamps.
Refund of value of-produced on account of process fees.

GOVERNMENT OF BOMBAY.

Revenue Department.

Resolution No. 6967.

Bombay Castle, 21st January 1942.

Letter from the Commissioner, S.D. No.L.A.W.633, dated the 12th May 1941:-

"I have the honour to state that in accordance with the instruction in paragraph 3 on page 140 and paragraph 9(viii) on page 142 of the Civil Manual of the High Court, Court-fee stamps for the issue of process are to be affixed to the application upon which process is to be issued and must be cancelled on the day of presentation or within a reasonable time but invariably before the document is filed or registered. In Government Resolution, Revenue Department No.8967, of 28th September 1923 the applicant was held entitled to a refund of the stamps for process where process did not issue.

" 2. There is a practice in many offices in this division of postponing the cancellation of the court-fee stamps on applications for the issue of process in Wadat and Wahivati suits until the process actually issues, with the result, in one taluka, that both stamps and documents were stolen in several wadat cases. It seems to be in accordance with the orders as well as necessary to insist on stamps on applications for process being punched in all cases immediately they are received and included in the file. But if this is done there will be frequent claims for refund and they ought to be allowed. If they are it will be necessary to empower Collectors to sanction refunds in such cases. At present the power is exercised only by Government (Government Order, Revenue Department,No.10463 dated 1st November 1916)."

Government memorandum, No.8967-E/12597,dated the 2nd June 1941, to the Superintendent of Stamps, the Commissioner,N.D. and the Commissioner C.D.

Letter from the Superintendent of Stamps, Bombay ,No.4654/5,dated the 15th July 1941:-

" With reference to Government memorandum, Revenue Department, No.8967-E/ 12597, dated 2nd June 1941, I have the honour to state that the suggestion of the Commissioner, N.D., to cancel immediately the court-fee, stamps affixed to the applications for the issue of process in 'Wadat' and 'Wahivat' suits may be accepted. The immediate/ cancellation of these stamps will prevent their theft and reuse. As there will be many claims for refund of Court-fee stamps in those cases in which the process did not issue as pointed out by the Commissioner, it will be necessary to authorise the Collectors to sanction refund of the value of Court-fee stamps thus cancelled on the production of a certificate from the officer who cancels the stamps that the process did not issue."

Letter from the Commissioner, N.D.,No.S.T.P.16,dated the 9th September 1941:-

" With reference to Government memorandum, No.8967-E/12597,dated 2nd June 1941, I have the honour to state, in consultation with the Collectors in this division, that the suggestions made by the Commissioner, S.D. in paragraph 2 of his letter, No.L.A.W. 633, dated 12th May 1941- viz.,(1) that stamps on applications for process should be punched in all cases immediately on their receipt and included in the file and (2) that the Collectors should be allowed to sanction refunds in cases in which claims for refund have been made - are reasonable and may be accepted;

Letter from the Commissioner, C.D.No.S.T.P.337, dated the 16th ~~September~~ Sept. 1941:-

"With reference to Government memorandum, No.8967-E/12597,dated 2nd June 1941, I have the honour to state that I agree with the C

P.T.O.

I have the honour to state that I agree with the Commissioner,S.D., that Collectors should be empowered to sanction refunds of cancelled Court-fee stamps if no process is actually issued and if a claim for refund is received within the reasonable time.

" 2. The period during which the refund of the value of spoilt stamps is permissible is two years (vide please Government Resolution, Revenue Department, No.9525, dated 19th September 1908). As the stamps under reference are usually of small value, a period of one year for the admissibility of a claim for refund might be prescribed."

RESOLUTION:- Government is pleased to direct that court-fee stamps affixed to applications for process should be punched in all cases immediately on receipt and included in the file. The Collectors are authorised to sanction refunds of the value of court-fee stamps thus cancelled on the production of a certificate from the officers who cancels the stamps that the process did not issue provided such applications are made within one year from the date of purchase of the stamps, or one year from the date on which the stamps were rendered useless.

By order of the Governor of Bombay,

R.F. KEITH,

Under Secretary to Government.

G.R. No.8967, R.D. dated the 21st January 1942.

To,

The Commissioner, Sind.R.D., etc.

H.V.V.
18/5.

Office of the R.L.A.

The view taken by the Postmaster-General, Bombay, in his letter at para 1 ante is correct. Section 3 of the Post Office Cash Certificates Act, 1917, read with section 6 of the Government Savings Bank Act, 1873, provides that where the amount due on the Post Office 5 years cash certificates belonging to the estate of a deceased holder does not exceed five thousand rupees, such amount shall be excluded in computing the fee chargeable under the Court Fees Act, 1870 on the probate or letters of administration, or certificate (if any), granted in respect of his property. From these provisions it is quite clear that when the amount due in respect of such certificates does not exceed five thousand rupees, such amount is excluded from payment of Court fee and when it exceeds five thousand rupees, then it is not so exempt. It is not correct to say that only the actual excess over five thousand is liable to court fee.(Cf.In re.Nalini Kanta Pal, I.L.R.60 Cal. 1262-see also names 388 and 389 of Basu's Court Fees Act and Suit Valuation Act, 6th edition). The Sub-Judge should therefore have correctly levied the court fee on Rs.7,720/- i.e. the whole amount and not only on Rs.2,720/- i.e. the excess over Rs.5,000/-.

It appears that the Postmaster-General, Bombay, has referred the matter to the Sub-Judge for the recovery of the deficit court fees but since the original application for the grant of the succession certificate has already been disposed of, the Sub-Judge will have no jurisdiction in the matter. (Cf. 46 Cal.520; Basu's Court Fees Act, page 764). Consequently the Sub-Judge will, in all probability, reply that he cannot do anything in the matter. But the Postmaster-General as the head of the office has powers under section 28 of the Court Fees Act to require the party to pay the deficit court fees, the mistake in recovering less court fees than

P.T.O.

usual under law being a mistake of law (Cf.24 Mad.331- 25 Mad.380). There will therefore be no legal objection to requesting the Postmaster-General to take action under section 28 of the Court Fees Act in case the Sub-Judge fails or is unable to recover the deficit court fees.

Sd/- P.N.BOOS,
16/2.

Remembrancer of Legal Affairs.

U.R. to M.D. No.1466, dated the 18th February 1942.

A-Cs.

M.V.T.
18/5.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the singular words "judgment", "decree", "order", or "document" in the last paragraph of article 1(a) in Schedule II to the Court-fees Act, 1870, include their plural also.

2. The last paragraph of Article 1(a) in Schedule II to the Court-fees Act, 1870, prescribes a Court-fee of 2 annas in respect of an application or petition presented to any Civil, Criminal or Revenue Court or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or Officer, or of any other document on record in such Court or office. Under section 13(2) of the General Clauses Act, 1897 words in the singular shall include the plural, unless there is anything repugnant in the subject or context. There does not appear any sound term except this general principle from being made applicable in respect of the language of clause 1(a). What is made liable to duty is an application or petition presented to any Court, Board or Officer. The application may be for obtaining a copy or translation of one judgment, order or document or a number of such documents. Each individual application or petition would require a Court-fee of two annas.

Sd/- P.N.MOOS,
29/4.

Remembrancer of Legal Affairs.

R.R. to H.D. No. 3672, dated the 30th April 1942.

4-Co.
E.V.V.
18/5.

P.I. 936-F
23/5.
6/6.

Submitted.

It is alleged in the letter of Mr. Elijah Jacob, Advocate, Bombay, written on behalf of his client Bai Jamiabai, daughter of the deceased Ebrahim Virji, that certain immoveable property at Rangoon, which was one amongst other items, in the schedule of property filed in the Bombay High Court, had been undervalued to the extent of nearly Rs.30,000/-, the resultant loss of probate duty to Govt. being about Rs.14,00/- It appears that the letters of Administration were granted to Alirahemad Ebrahim, the Administrator of the Estate, on 11.8.1913 after having produced two sureties and the petitioner exhibited the inventory and accounts of the estate of the deceased as required by sec. 317(1) of the Ind.Succ. Act, 1923 on 23.10.1913. Since then the petitioner (executor) is stated to have died. The Supdt. of Stamps, to whom the papers were referred by the Collr., is of the opinion that no action can be taken for recovery of the deficit probate duty after the expiration of the period of six months prescribed by the proviso to sec.19 H(4) of the Court Fees Act, 1870 and that as the petitioner is already dead no proceedings can be taken either against his successor in the administration of the estate. The papers are forwarded to the Solicitor to Government in L.D.,for remarks.

Solicitor

4-Cs.
K.V.V.
18/5.

Opinion.

I think that the death of Ratanbai on the 16th of May 1947 has rendered the taking of any proceedings in this matter very difficult.

It is obvious that no criminal proceedings can now be taken and any investigation for the purpose of taking such proceedings is useless. The offence, if any, could have been an offence committed by Mr Ratanbai who is now dead.

Under the circumstances, the question to consider is whether the proceedings initiated by the Collector against Ratanbai by his letter dated the 14th of March 1940 under Section 19/H(3) of the Court Fees Act can after her death be continued against her legal representative.

The scheme of Court Fees Act in regard to stamp duty payable on Probate is that the Court should not make an order entitling the petitioner to the grant of Probate until the petitioner has filed in Court a valuation of the property and the Court is satisfied that the fee prescribed has been paid on such valuation. (Section 19/I). Section 19/H of the Act provides that when an application for Probate is made notice of such application is to be given to the Chief Controlling Revenue Arthority. Sub-section (3) of that section empowers the Collector to take inspection of the record of any case in which an application for Probate has been made. It further empowers the Collector if he is of opinion on such inspection or otherwise that the petitioner has undervaluated the value of the property of the deceased to require the attendance of the petitioner either in

Person...

4-Co.
K.V.V.
18/5.

person or by agent and take evidence and if on inquiry he is still of the opinion that the value of the property has been underestimated to require the petitioner to amend the valuation. If the petitioner does not amend the valuation to the satisfaction of the Collector sub-section (4) which enables the Collector to move the Court to hold inquiry into the true value of the property. Sub-section (5) provides that the Court so moved shall hold or cause to be held an inquiry into the matter and shall record a finding as to the true value of the property of the deceased, the Collector being deemed to be a party to the inquiry. Sub-section (6) provides that for the purposes of any such inquiry the Court or the person authorised by the Court to hold the inquiry may examine the petitioner for Probate and may take such further evidence as may be produced to prove the true value of the property. Sub section (7) provides that the finding of the Court recorded under sub-section (5) shall be final. Section 19/J of the Act provides that any excess fee found to be payable on an inquiry held under section 19/H(6) may on the certificate of the Chief Controlling Revenue Authority be recovered from the executor as if it were an arrear of land revenue.

It appears to me that the scheme of these sections is to enable the Revenue Authorities to question the valuation made by the petitioner, have an enquiry held in the course of which the petitioner may be examined and if the finding is against the petitioner to enable the recovery of the excess from the petitioner. The proceedings contemplated by section 19/H and the recovery contemplated by section 19/J are against the petitioner only. There is no provision which enables any proceedings to be taken in the event of the petitioner being dead either against the legal representative of the petitioner or against his successor in the administration of the estate.

A-Co.
S.V.V.
18/5.

It appears to me, therefore, that it is not competent to the Collector to proceed under Sec. 10-H (3) against the legal representative of Ratanbai or any successor to Ratanbai in the administration of Lalji's estate, Nor would it, I think, be open to the Collector to proceed against such legal representative or successor under sub-secs. (4),(5) and (6) of that section.

In this respect the scheme of our legislation seems to be different from that in England. It appears that in England the obligation to pay any excess in Probate and Legacy duties is laid on "the person acting in the administration" of the estate and the amount of such excess is constituted a debt due by such person to the Crown. See Sections 32, 37 and 40 of the Customs and Inland Revenues Act 1881 (44 Vic. c 12; and 22 13 Hals, under the heading " Legacy duty and succession duty.")

It appears to me, therefore, that no proceedings excepting those prescribed by the court fees Act can be taken for the recovery of any excess stamp duty payable by reason of an undervaluation of the estate.

I do not think that an application under either Sec. 10 or 11 of the Administrator General's Act as suggested is competent. Under these Sections the Court has to be satisfied that danger is to be apprehended to the assets by reason of misappropriation, deterioration or waste or that there is no person immediately available who is legally entitled to the succession of such assets. If Ratanbai has left a will. The executors named in the will have presumably already taken charge of her estate and therefore the conditions required for the applicability of these sections do not exist.

In the event of an application for a further grant to Lalji's estate either by Ratanbai's executrix or some other person the Collector would in reference to such petitioner be able to raise the question of undervaluation under the Sections of the Court fees Act mentioned above.

M.C. Setalvad,

Advocate General, 23.8.40

A-Cs. M.V.V. 19/5.

Office of the R.L.A.

The view expressed by the Assistant Superintendent of Stamps in his endorsement at pages 11-12 ante is correct.

Sd/- P.N.KOOS,
30/6.

Remembrancer of Legal Affairs.

U.R. TO THE Collector of Bombay, No. 5351 dated 1st.July 1942.

4-Cs.
M.V.V.
19/5.

Office of the R.L.A.

The first question which arises for consideration in this case is whether rules can be made under section 27 of the Court-fees Act, 1870, requiring the Superintendent of Stamps to determine the amount of the court fee to be paid in the case of succession certificates issued under section 372 of the Indian succession Act, 1925, and to cancel the stamps due on such certificates. Under section 27 of the Court fees Act, 1870, Government is given power to make rules for regulating.

(a) the supply of stamps to be used under the Act,

(b) the number of stamps to be used for denoting any fee chargeable under the Act,

(c) the renewal of damaged or spoiled stamps; and

(d) the keeping accounts of all stamps used under the Act. The power to regulate the supply of stamps to be used under the Act would not include the powers to determine the amount of fee to be paid on any document. It does not therefore appear that any rule can be made under section 27 giving power to the Superintendent of Stamps to determine the amount of court-fee which should be paid on any succession certificate. Nor does it appear that any rule can be made under the section requiring the Superintendent of Stamps to cancel the stamps used on any document. It will be necessary to amend the Court-fees Act suitably in order to ensure that proper court fee is denoted and paid, and court fee stamps cancelled in respect of succession certificates issued under section 372 of the Indian Succession Act. A possible alternative would be for Government to issue executive instructions to the Superintendent of Stamps to calculate the amount of fees due on succession certificates brought before him and sell the requisite stamps. But if any person objects to the cancellation of any such stamps by the Superintendent, it does not appear that the Superintendent can exercise the power under the authority of any executive instruction issued by Government.

P.T.O.

2. The next question raised for consideration is whether it is open to the Political Officer to issue separate succession certificates in respect of properties situate in different Provinces. It does not appear from any of the provisions contained in Part X of the Succession Act, 1925, that the Act contemplates the granting of more than one certificate. Section 380 of the Act provides that a certificate granted under Part X shall have effect throughout the whole of British India. The plain intention of this provision is to obviate the necessity of the grant of separate certificates in respect of debts due from persons in different Provinces. This is also emphasised by the provisions in section 376 of the Act where the Court is given power not to grant a separate certificate, but to extend the certificate to any debt or security not originally specified therein. It does not therefore appear that it would be competent for the Political Officer to issue separate succession certificates in respect of properties situate in different Provinces. Nor does it appear administratively necessary to issue more than one certificate. Under section 382 read with section 380 of the Succession Act, a certificate granted by a British representative in a foreign State when stamped under the provisions of the Court-fees Act in any part of British India becomes effective throughout British India, irrespective of where in British India the property (debts and securities) is situate, or what amount of court fee is leviable in any other part of British India.

3. As regards the question at 'A' of Deputy Secretary, Home Department's note at p.126 ante, the matter relates to the procedure to be followed by the Courts or Public Officers and no rule in this respect can be made under the court fees Act.

Sd/- P.M.ROOS,

Remembrancer of Legal Affairs.

U.R TO H.D. No.6734 dated the 19th August 1942.

4-Cs.
M.V.V.
19/8.